



HUMAN TRAFFICKING FOR THE PURPOSE OF LABOUR EXPLOITATION –

An evaluation of prosecutorial investigation
files and judicial decisions

unsichtbar

Bündnis gegen Menschenhandel
zur Arbeitsausbeutung

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The German study „Human trafficking for the purpose of labour exploitation – An evaluation of prosecutorial investigation files and judicial decisions“ contains an introduction, a report on the results and findings of the study, the reports from the federal states Brandenburg, North Rhine-Westphalia, Lower Saxony and Rhineland-Palatinate as well as a presentation and analysis of the judicial decisions. Below the introduction and the report on the results and findings are translated into English.

For further information please visit www.buendnis-gegen-menschenhandel.de/en or contact us via e-mail to Schwertmann@berlin.arbeitundleben.de.

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Hiroshimastr. 17, 10785 Berlin

EDITOR: Friedrich-Ebert-Stiftung
Department Political Dialogue, Berlin Policy in Berlin Forum

AUTHORS: Ruxandra Empen, Dr. Christoph Lindner, Luiza Lupascu, Ildikó Pallmann,
André Thielmann, Julia Windhorst

EDITING: Nicole Zeuner, Luiza Lupascu

PROOFREADING: Dr. Angela Borgwardt

DESIGN: Andrea Schmidt – Typografie im Kontext – Berlin

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INTRODUCTION

Many of the statements made about human trafficking for labour exploitation are based on – in part well-founded – assumptions. Yet in the interests of effective measures against human trafficking, it is desirable to be able to draw on representative and comprehensive data.

The lack of data can in part be explained by the nature of the phenomenon that is human trafficking for labour exploitation: the exploited often find themselves in informal work contexts and in emotional, linguistic and/or physical isolation. This leads them into a predicament which is very difficult to detect and record. Far too often, the problems remain unrecognised and nameless.

Yet the term "human trafficking" is itself inherently problematic, fostering the lack of data: many people do not have a precise understanding of what it encompasses. Every day, numerous stakeholders from the spheres of state administration and civil society come into contact with victims of labour exploitation: employees of the judicial authorities, advisory bodies, immigration authorities, job centres, labour inspectorates, unions, migrant initiatives, churches, homeless shelters and various local government bodies. All of these stakeholders could uncover cases of human trafficking for labour exploitation; yet many of them are insufficiently aware of what this constitutes. Another difficulty is that victims are often afraid to talk about their situation. Furthermore, labour exploitation is traditionally prosecuted under employment law, so that many stakeholders express uncertainty regarding the question of when situations of exploitation should be classed as a criminal offence.

SECTION 233 OF THE GERMAN CRIMINAL CODE (STGB) – HUMAN TRAFFICKING FOR THE PURPOSE OF LABOUR EXPLOITATION

(1) Whosoever exploits another person's predicament or helplessness arising from being in a foreign country to subject them to slavery, servitude or bonded labour, 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 labour 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.

SECTION 233A OF THE GERMAN CRIMINAL CODE (STGB) – ASSISTING IN HUMAN TRAFFICKING

(1) Whosoever assists in human trafficking under Section 232 or Section 233 by recruiting, transporting, referring, harbouring 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 (Section 176(1));
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.

The uncertainty surrounding the application of the law on human trafficking for labour exploitation is in part also due to how it is formulated: on the one hand, Section 233 is very broadly defined, as it describes labour exploitation as employment in working conditions "that are in clear discrepancy to those of other workers performing the same or a similar activity". On the other hand, the legal standard is titled "Human trafficking", and describes slavery and servitude as examples of labour exploitation. This evokes associations which do not correspond with the actual phenomenon.

Experts agree that the number of unrecorded cases is high. The International Labour Organization (ILO) is thus far the only organisation to have published an estimate of the global extent of forced labour and to have established these figures by means of a detailed and transparent methodology. The ILO's definition of forced labour here roughly corresponds with the German legal definition of human trafficking. The ILO assumes that 880,000 people are affected by forced labour within the EU, of which 610,000 people (70%) are exploited for their labour, and 270,000 people (30%) for the purposes of sexual exploitation. There are only rough estimates available for the total incidence of forced labour in Germany, and only excerpt-like recording of certain areas, such as the completed criminal investigations of the Federal Criminal Police Office (Bundeskriminalamt, BKA), published in its "Bundeslagebild Menschenhandel" ("Federal Situation Survey on Human Trafficking").

Yet there is also a lack of a comprehensive investigation into the recorded cases. The possibilities for recording reliable data have thus far been underutilised. For example, the BKA's annually published "Bundeslagebild Menschenhandel" survey records only the reports from the state criminal police offices on completed criminal investigations. Yet this survey does not include any of the processed cases overseen by the Office of Financial Control of Illegal Employment (Finanzkontrolle Schwarzarbeit). The survey also excludes any data gathered from the practices of specialised advisory bodies.

This study is designed to provide insights into the recorded cases of the offence of human trafficking for labour exploitation and, to a certain extent, shed some light on the extent of unrecorded cases. It is intended to provide information regarding which incidents of exploitation were categorised as human trafficking for labour exploitation according to which indicators by the judicial authorities and courts; why investigations pursuant to Section 233 StGB were initiated; the course which the criminal proceedings took; and how many people were affected.

The representative strength of the data recorded for this study is limited to the areas investigated by those public prosecution offices which provided access to the investigation files, and to those court rulings which were available to the interested public and which could be evaluated. On this basis, it was possible to establish theories regarding the respective aspect of the phenomenon which the judicial authorities had knowledge of and categorised as potential human trafficking. These theories should be subsequently tested in a comprehensive study. However, generally applicable statements regarding human trafficking for labour

exploitation in Germany can be derived from this data evaluation only to a limited degree, mainly with regard to the way that the investigative authorities handle potential cases.

In terms of data recording, the challenge also lies in the fact that the files of the prosecution offices are not designed for scientific evaluation, and in some instances only contain information necessary for criminal prosecution. This means that individual files cannot contain indicators which would be of interest for this study. This particularly includes files for investigations which were discontinued at an early stage because no criminal activity on the part of the perpetrators could be determined. In such instances, there is also no further investigation into potential duress or conspicuously inappropriate conditions. Another problem is the fact that the files often contain only vague statements regarding working conditions. Nevertheless, the files as a whole do provide an accurate picture of prosecutorial practice, which is the main area of interest of this study.

The evaluation of the investigation files began in 2014 in the three federal states of Brandenburg, North Rhine-Westphalia and Rhineland-Palatinate. During this phase, fewer than half of the public prosecution offices in North Rhine-Westphalia participated. In Rhineland-Palatinate, access was granted to relevant files dating up to May 2014. The results were of great interest to the advisory board of the Alliance against Human Trafficking for Labour Exploitation, resulting in the expansion of the evaluation of the criminal investigations in collaboration with the Friedrich Ebert Foundation's BerlinPolitik im Forum Berlin. In a second stage, the data-collection guidelines were revised on the basis of the experience gained during the first evaluation phase. Requests were sent via the respective justice ministers to the public prosecution offices of the federal states of Baden-Württemberg and Lower Saxony. In Berlin, the public prosecution office was approached directly. Experience has shown that the willingness of the respectively approached institution to provide support varied.

As part of this study, it was possible to evaluate a total of 91 criminal investigations conducted in the federal states of Rhineland-Palatinate, North Rhine-Westphalia, Lower Saxony and Brandenburg. The available files were qualitatively analysed using a list of indicators. Assessments regarding the legal classification of HT/LE were taken from the files in anonymised form.

The results of the individual reports from the four federal states and the analysis of the available verdicts are collated in the chapter "Results and findings". Furthermore, recommendations are made on how to increase the rates of prosecution and conviction in the area of human trafficking for labour exploitation, and how to improve the protection and support provided to victims.



RESULTS AND FINDINGS OF THE STUDY

Dr Christoph Lindner

The analysis of the criminal investigations into human trafficking for labour exploitation in the federal states of North Rhine-Westphalia, Rhineland-Palatinate, Lower Saxony and Brandenburg revealed new or hitherto neglected insights, and in part also refutes widely held assumptions regarding this offence. A total of 91 criminal investigations were included in the analysis, for which the investigation files were respectively available.

TABLE 1

YEAR IN WHICH THE INVESTIGATION WAS INITIATED ¹	NUMBER OF INVESTIGATIONS
2015	2
2014	6
2013	13
2012	12
2011	17
2010	18
2009	6
2008	5
2007	7
2006	4
2005	1
TOTAL	91 PRESENTED INVESTIGATIONS

This number does not yet allow for any representative statements, not least because the number of investigations varies greatly between federal states. Yet the evaluation of the data from four federal states shows that in terms of the recorded investigations into human trafficking for labour exploitation, the "Bundeslagebild Menschenhandel" survey does not provide a comprehensive picture of the recorded cases. The survey records only 11 investigations nationwide in 2012, and only 13 in 2011.² There thus seem to be considerably more investigations than appear in these statistics.

 In order to gain a clearer picture of the unrecorded cases of human trafficking for labour exploitation, it is essential to comprehensively document the recorded cases. A comprehensive study of the investigation files in all federal states is advisable.³ To achieve this would also require the support of the ministries of justice in all other federal states in order to ensure that the investigation files are made available.

¹ For Rhineland-Palatinate, the data was recorded up until May 2014. Investigations initiated after this time were not recorded. There were no recorded investigations in Brandenburg for 2015.

² Bundeskriminalamt, Lagebild Menschenhandel 2012, p. 9.

³ A comprehensive study would also require the inclusion of investigations pursuant to Section 266a StGB, as it is likely that human trafficking offences would also be revealed in such investigations.

With regard to the nationality of the injured parties, the evaluation confirmed the generally assumed high vulnerability in terms of exploitation of victims from the eastern EU states. Of the approx. 582 victims, 139 were from Romania, 127 from Poland and 106 from Hungary. Yet a considerable number of victims also came from China (63 people) and India (45 people). It is remarkable that of the nearly 30 different nationalities, only one single African state of origin is represented.⁴ By contrast, one victim from Germany was also exploited within his native country.

TABLE 2

NATIONALITY OF THE INJURED PARTIES	NUMBER (SEX)
Albania	2 (2 men)
Bosnia-Herzegovina	1 (1 man)
Brazil	1 (1 woman)
Bulgaria	23 (3 women, 11 men, 9 additional persons)
China	63 ⁵ (63 men)
Germany	2 (2 men)
India	45 (45 men)
Italy (state of origin: India)	2 (2 men)
Yugoslavia ⁶	1 (1 woman)
Kosovo	1 (1 woman)
Croatia	1 (1 woman)
Latvia	1 (1 man)
Pakistan	1 (1 man)
The Philippines	2 (2 women)
Poland	127 (19 women, 108 men)
Portugal	Indeterminate number of people (anonymous reporting)
Romania	139 (11 women, 98 men, 30 of unknown sex)
Serbia and Montenegro	31 (30 men, 1 woman)
Slovakia	1 (1 man)
Spain	2 (2 men)
Sudan	1 (1 man)
Czech Republic (state of origin: Vietnam)	4 (4 men)
Turkey	1 (1 woman)
Hungary	106 (indeterminate number of men and women)

⁴ In the analysis of verdicts, two cases are also represented in which two women from African countries were exploited.

⁵ The total number of Chinese injured parties indicated here might potentially contain duplications, as the major investigation spawned separate investigations involving some of the same injured parties in Lower Saxony.

⁶ The file did not provide more specific information concerning the nationality.

Venezuela	1 (1 man)
Vietnam	10 (2 women, 8 men)
Unknown	6
TOTAL	575 people (381 men, 43 women, remaining people: undetermined)

➔ The significant number of third-country nationals among the victims requires an effective process of sophisticated advisory services in the respective languages.

The sex distribution confirms the generally held belief that a large proportion of victims of labour exploitation are men. Though investigation files did not always indicate the sex of the victims, there is on the whole a clear ratio of 90 percent male to 10 percent female victims.

➔ The large number of male victims is juxtaposed with a vacuum in support structures, as specialist advisory services and emergency shelters are generally geared towards women. Suitable support services should be created here as a matter of urgency.

The sectors in which labour exploitation was detected are numerous. Sectors such as construction, agriculture (especially seasonal work) and meat-processing are generally classed as particularly susceptible to exploitative working conditions. But there is also a great risk of exploitation in the catering industry. Across all sectors, it can be seen that victims predominantly carry out tasks which require little training and/or few qualifications, in which the worker can be easily replaced, and which are poorly remunerated. There were few instances of forced begging among the investigations included in this study.⁷ Along with the particularly high number of unrecorded cases in this area, this may also have to do with the individually represented view – erroneous in law – that forced begging is not covered under Section 233 StGB.⁸

TABLE 3

SECTOR	NUMBER OF INVESTIGATIONS	NUMBER OF INJURED PARTIES	ADDITIONAL POTENTIAL INJURED PARTIES
Au pair	2	2	0
Automotive trade and real estate	1	Number unknown	
Construction	14	165	53
Begging	2	3	
Professional sports	1	1	
Meat-processing	3	137	
Gardening / Agriculture / Seasonal work	10	60	176
Catering	23	76	37
Household	11	27	59
Hotel industry	1	1	0
Interior construction	1	1	35

⁷ One of the judicial decisions examined in this study deals with this form of exploitation.

⁸ Presented in the state analysis for North Rhine-Westphalia.

SECTOR	NUMBER OF INVESTIGATIONS	NUMBER OF INJURED PARTIES	ADDITIONAL POTENTIAL INJURED PARTIES
Metal industry	1	30	
Nail studios	2	4	9
Nursing	2	5	29
Fairground work	2	1	3
Table dancing	1	2	
Day labour	1	9	30
Peat extraction	1	9	30
Unknown	5	34	
Packaging industry	1	Number unknown	
Various: transport, cleaning, assembly of solar panels, installation of motorway crash barriers	1	Number unknown	
Weekly market	1	1	
Newspaper sales	4	7	121
TOTAL	90	575 people	552 people



A sector-specific approach is recommended in each instance, together with an examination of the regulations and systematic controls extant in each sector.



For all cases of human trafficking for labour exploitation involving begging, concepts should be developed serving to protect victims and support them in freeing themselves from dependency.

The evaluation of the nationalities of suspected perpetrators shows that in the majority of cases, foreign victims are being exploited by foreign perpetrators. A third of suspected perpetrators are German nationals. Whereas the proportion of female victims was only 10 percent, more than 20 percent of suspected perpetrators were women.

TABLE 4

NATIONALITY OF THE SUSPECTED PERPETRATORS	NUMBER AND SEX
Brazil	1 woman
Bulgaria	2 men
China	5 men, 4 women
Germany (3x country of origin: Turkey; 6 x country of origin: China; 2x country of origin: Vietnam)	32 men, 5 women
Estonia	2 men
India	2 men, 1 woman
Kazakhstan	1 man
Qatar	2 women

NATIONALITY OF THE SUSPECTED PERPETRATORS	NUMBER AND SEX
Kosovo	1 man
Croatia	1 man
Lebanon	3 men
Macedonia	3 men
Netherlands (2x country of origin: China)	1 woman, 1 man
Austria	1 woman
Pakistan	1 man
Poland	5 women, 10 men
Switzerland	1 man
Serbia	3 men, 1 woman
Spain (1 x country of origin: Nigeria; 1 x country of origin: Brazil)	2 men
Syria	1 man
Turkey	8 men, 1 woman
Czech Republic	1 man
Unknown	5 men; 2 investigations (to Lower Saxony)
USA	1 man
Vietnam	2 women, 2 men
TOTAL	88 men, 24 women

The causes for initiating the investigations examined in this study are remarkable. In general, human trafficking is seen as a control-related offence. Here, nearly half of victims themselves or witnesses turned to the authorities.

TABLE 5

CAUSES FOR INITIATING THE INVESTIGATION	NUMBER OF INVESTIGATIONS
Advisory services report to authorities	6
Victims turn to authorities	25
As part of investigations into other offences (organised crime, people smuggling, illegal employment, forgery, attempted manslaughter, rape, breach of the Narcotics Law (BtMG), non-payment and misuse of wages)	33
On-site inspections by authorities	6
Witnesses turn to authorities	19
Other (police patrol picks up victim, anonymous tip-off)	2
TOTAL	91



It would be worthwhile to further reduce the thresholds to the reporting of crimes by both victims and witnesses, e.g. through the provision of targeted information, generating public awareness and training the authorities in how to deal with this offence, particularly in the areas of victim identification, victim protection and asset forfeiture.

Alongside human trafficking for labour exploitation, a large number of other offences were being looked into by the investigations included in this study. The number of investigations on the grounds of bodily injury seems to be relatively low, though there is no clearly discernible cause for this. By contrast, immigration offences were – not surprisingly – at the top of the list. These are regularly accompanied by investigations on the grounds of non-payment of wages pursuant to Section 266 a StGB.

TABLE 6

IN ADDITION TO SECTION 233/233A STGB, WHAT OTHER OFFENCES WERE INVESTIGATED?	NUMBER OF CASES
Fraud (Section 263 StGB)	5
Smuggling of foreigners (Section 96 of the German Residence Act (AufenthG))	15
Smuggling of foreigners resulting in death; smuggling for gain and as organised gangs (Section 97 AufenthG)	1
Deprivation of liberty (Section 239 StGB)	5
Bodily injury and dangerous bodily injury (Sections 223 and 224 StGB)	5
Usury (Section 291 StGB)	6
Human trafficking for the purpose of sexual exploitation (Section 232 (4) StGB)	1
Coercion (Section 240 StGB)	4
Breach of the Act to Combat Illegal Employment	6
Sham marriage	1
Tax fraud	3
Illegal residency in Germany (Section 95 AufenthG) or illegal employment of victims (NRW)	17
Unlawful appropriation (Section 246 StGB)	2
Forgery (Section 267 StGB)	3
Breach of the German Temporary Employment Act	2
Non-payment of wages	19
Weapons offences	2
TOTAL	97

The prosecution of the victims themselves is a development which is crucial to correct. The prosecutions are predominantly against third-country nationals on the grounds of immigration offences. Because breaches of the Residence Act are easier to prove than offences of human trafficking for labour exploitation, the bizarre situation can arise in which victims of human trafficking are punished while the investigation into the perpetrators are discontinued.



In the case of more minor offences committed by victims as the result of being exploited, exemption from prosecution should be routinely provided, in line with Art 8 of Directive 2011/36/EU.

The law enforcement authorities involved in the investigations were recorded for North Rhine-Westphalia, Brandenburg and Lower Saxony. This reveals that the Office of Financial Control of Illegal Employment (Finanzkontrolle Schwarzarbeit) is in charge of fewer investigations than presumed, despite this authority having a corresponding responsibility pursuant to Section 10a of the German Act to Combat Illegal Employment (SchwarzArbG).

TABLE 7

JUDICIAL AUTHORITIES INVOLVED	POLICE	OFFICE OF FINANCIAL CONTROL OF ILLEGAL EMPLOYMENT
In charge of the investigation	60	10
Involved	2	13

➔ The role of the Office of Financial Control of Illegal Employment during investigations into human trafficking for labour exploitation should be consolidated through the provision of tailored training measures for the identification and treatment of victims of human trafficking. It is also vital that the investigative procedures of the Office of Financial Control of Illegal Employment be systematically recorded in future and included in the "Bundeslagebild Menschenhandel" survey.

When examining the measures taken by the investigating authorities, it becomes clear that during the course of 91 investigations, only 14 victim-protection measures were implemented. It is only possible to evaluate this situation on an individual basis; yet the mere fact of this low figure suggests that victim-protection measures are implemented less frequently than would be appropriate and necessary.

➔ All employees of the investigating authorities who might potentially deal with victims of human trafficking should be expertly advised on the protection measures available to them. This recommendation is in line with the binding regulations of Art. 11 Para. 2 and 5, and Art. 18 Para.3, of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

With regard to further investigative procedures, it is striking that the measures of telecommunications monitoring (TCM) permitted when investigating human trafficking offences are rarely used, even though such measures are generally suitable for obtaining additional information about the crime and the perpetrator(s). Asset-freezing and asset-forfeiture measures were used equally seldomly.

TABLE 8

MEASURES TAKEN BY THE INVESTIGATING AUTHORITIES	NUMBER OF CASES
Victim protection	
Involvement of an advisory body	5
Accommodation	7
Measures to protect victims	2
Investigative measures	
Calculation of financial damages	5
Searching the homes and business premises of the accused	26
Reading of e-mails, deployment of an undercover investigator, wanted person alerts via INPOL	1

Arresting the accused on the grounds of danger of suppression of evidence	1
Judicial questioning of witnesses	1
Freezing the assets of the suspected perpetrator (Section 111 et seq. of the German Code Of Criminal Procedure (StPO))	7
Telephone monitoring (Section 1 100a StPO)	6
Analysis of traffic data	2
Letters rogatory	2
Investigating perpetrators' assets	1
Collaboration with Interpol	1

With regard to the outcome of the investigations, the study reveals a sobering result. Only three cases resulted in a criminal conviction. The majority of the investigations were discontinued pursuant to Section 170 Para. 2 StPO because the public prosecution office deemed there to be an insufficient likelihood of a conviction. A qualitative examination of the individual investigations in the state reports shows that even after examining the entire file, the decision to discontinue the investigation is not always comprehensible.

TABLE 9

OUTCOME OF THE INVESTIGATION	NUMBER OF INVESTIGATIONS
Charges brought by the public prosecution office	9
Discontinuation subject to conditions pursuant to Section 153a StPO	5
Discontinuation pursuant to Section 170 II StPO	53
Discontinuation due to temporary obstacles pursuant to Section 205 StPO	1
Discontinuation due to insignificance (minor fault and no public interest) pursuant to Section 153 StPO	6
Conviction	3
Other: Section 154 StPO/Section 152,2/Section 160,1, prohibition of double jeopardy/ criminal charge changed to smuggling/outcome unclear, ancillary suits ("Nebenklage") submitted by injured party/submission to public prosecution office with the request to check Section 233 StGB	15
TOTAL	92⁹

The evaluation of the verdicts passed by German criminal courts in cases of human trafficking for labour exploitation provides a heterogeneous picture with a broad scope. The analysis of the investigations initially reinforced the impression that the spectrum of interpretation regarding Section 233 StGB is extremely broad. The 14 evaluated verdicts resulted in the imposing of the following sentences on the perpetrators:

⁹ The deviation from 91 investigations studied results from one of the investigations being split.

TABLE 10

SENTENCE IMPOSED UPON A CONVICTION PURSUANT TO SECTION 233 STGB ¹⁰			
Lowest imposed sentence	Highest imposed sentence	Average	Proportion of suspended sentences
6 months' imprisonment	3 years and 6 months' imprisonment	1 years and 10 months	61.5% of prison sentences suspended

While the uncertainty with regard to interpreting and applying Section 233 StGB frequently led to a discontinuation in the investigations, the analysis of the verdicts reveals that some courts conclude that a crime has been committed without any subsumption or awareness of a problem. This potential for legal uncertainty is also highly problematic with regard to the requirements of the European Convention on Human Rights: in order to meet the state's obligation to provide protection as laid out in Art. 4 ECHR, clear punishment guidelines and comprehensive, effective legal practice are required.¹¹

- ➔ The offence as defined in Article 233 StGB and the application of this article in legal practice are in urgent need of reform, and do not currently meet the requirements of Art. 4 ECHR in the jurisprudence of the ECHR.¹²
- ➔ In legal practice, an easily implementable measure urgently recommended is the consultation of recognised indicator lists¹³ when assessing potential cases of human trafficking. These lists do not replace the consideration of the circumstances of the individual case, but rather help to provide a better structure for, and comprehensible assessment of, the facts.
- ➔ Using specific training measures and networking, public prosecution offices and courts should consolidate their expertise with regard to the specifics of human trafficking cases (e.g. interpretation of legal standards, investigative approaches, international collaborations, victim protection measures). Dedicated departments within the public prosecution offices (analogous to those set up to tackle human trafficking for sexual exploitation) would further increase this specific expertise.¹⁴
- ➔ The collecting, processing and distributing of judicial decisions should be intensified.

With regard to the periods of exploitation determined in the judicial decisions examined in this study, a spectrum ranging from 2 weeks to 10 years was found. Due to the few available figures and these extreme values, it is not possible to provide an average duration. Yet the majority of exploitative situations lasted between 3 to 18 months.

In the first instance, the duration of the investigations also varies greatly. Whereas one local court took only two months from the time the crime was reported to pass a verdict, a case appearing before one district court took 2 years and 10 months from the discovery of the crime before a verdict was passed.

¹⁰ It must be taken into account that in many instances, the sentencing also included other related or separate offences. These were not individually listed.

¹¹ Cf. the explanations in the chapter "Gerichtliche Entscheidungen zu Menschenhandel zum Zwecke der Arbeitsausbeutung – Darstellung und Analyse" ("Judicial decisions on human trafficking for labour exploitation – presentation and analysis".)

¹² The requirements of Directive 2011/36/EU also necessitate reform. Thus, for example, Art. 5 and 6 of the Directive determine the criminal liability of legal persons who do not thus far exist in law in Germany.

¹³ Cf., for example, the sector-specific list of indicators of the "Berlin Alliance against Human Trafficking" (http://www.gegenmenschhandel.de/index.php?option=com_content&view=article&id=100&Itemid=18&lang=de). It would make sense to incorporate these lists within authorities' internal procedure guidelines, as has been done by the Dutch judicial authorities, for example.

¹⁴ The fact that this is necessary and likely to be successful is revealed in several instances by the analyses of the investigations. A public prosecution office in Rhineland-Palatinate put forward the view that au pairs and seasonal workers were not covered by the offence as formulated in Section 233 StGB.

TABLE 11

DURATION OF THE INVESTIGATION FROM THE DISCOVERY OF THE CRIME TO A VERDICT IN THE FIRST INSTANCE

Shortest duration	Longest duration	Average
2 months	2 years and 10 months	1 year and 6 months

In practice, a long investigative duration generally has a negative impact on the willingness to testify and submit an ancillary suit ("Nebenklage"). The option to issue a residency permit to victims pursuant to Section 25 Para. 4 a/b AufenthG is still rarely used in practice. When a residency permit is issued, in most instances it is limited to six months with the option to extend it. With an average investigative duration of 1 year and 6 months, such a limit is not realistic.

➔ Pursuant to Section 25 Para. 4 a/b AufenthG, third-country nationals as potential victims of human trafficking should be regularly issued with a residency permit of at least one year's duration in order to help stabilise victims and increase their safety and willingness to testify.

The analysis of the verdicts allows for statements regarding perpetrator structures only to a limited degree. However, it was striking that perpetrators generally acted alone or in concert with a fellow perpetrator or accessory. It was also noteworthy that some perpetrators were themselves in precarious financial situations, and sought to change this situation or prevent further financial hardship at the expense of the victims by means of exploitation. Depending on the sector and circumstances of exploitation, the achievable financial benefit of the respective perpetrator ranged from 750 euros/month (begging) in takings to 4,400 euros/month in saved expenditure (specialist chef working extremely long hours). On the whole, the study shows that depending on the sector, 1,500 euros to 3,000 euros can easily be "saved" in labour costs by means of human trafficking for labour exploitation when compared to the minimum wage of the lawfully employed, and profits thus considerably increased. Yet in the cases examined in this study, the existing tools for asset forfeiture and asset freezing were not used against the perpetrators during the investigation of the offences. The existing options for imposing a financial penalty as well as a prison sentence were equally underutilised. A mere prison sentence, particularly in light of the issuing of suspended sentences observed in the majority of cases, is not a sufficient deterrent as long as the economic benefit achieved by the crime is not withdrawn.

➔ No economic benefit must remain to perpetrators of offences of human trafficking for labour exploitation. The pecuniary benefits should be withdrawn from the perpetrators and be made available to the victims as compensation.



